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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/445,328	12/07/1999	KUBER T. SAMPATH	JJJ-PO1-514	9813

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FISH & NEAVE IP GROUP  
ROPES & GRAY LLP  
ONE INTERNATIONAL PLACE  
BOSTON, MA 02110-2624

EXAMINER
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ART UNIT	PAPER NUMBER
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DATE MAILED: 08/21/2007

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Notification of Non-Compliant Appeal Brief (37 CFR 41.37)</b>	<b>Application No.</b> 09/445,328	<b>Applicant(s)</b> SAMPATH ET AL.	
	<b>Examiner</b> David S. Romeo	<b>Art Unit</b> 1647	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

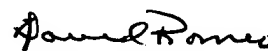
The Appeal Brief filed on 03 May 2007 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.

**EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☐ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☒ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☒ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

See Continuation Sheet.

  
David S. Romeo  
Primary Examiner  
Art Unit: 1647

Continuation of 10. Other (including any explanation in support of the above items): In section VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL (page 9) of the appeal brief Appellants state: "The single ground of rejection to be reviewed on appeal is whether independent claims 2, 53, 58, 61 and 64 satisfy the nonobviousness requirement of 35 U.S.C. 103(a)." This statement does not comply with the rule (37 CFR 41.37(c)(1)(vi)).

Appellants also repeat the two separate grounds of rejection of made by the examiner prior to the appeal. These statements comply with the rule (37 CFR 41.37(c)(1)(vi)).

In section VII. ARGUMENT (page 11) Appellants present their contentions with respect to a single grounds of rejection. On page 11 of the Brief Appellants state: "The Examiner rejects claim 58 as being allegedly obvious over Kelly ... in view of Kubersampath ... and Lefer ... . Claims that depend from claim 58 are rejected in further view of Anderson ... and Brady ... ."

However, the examiner only rejects claims 2 and 53 under 35 U.S.C. 103(a) as being unpatentable over Kelly in view of Kuberasampath and Lefer.

Claims 58, 61 and 64 were rejected under 35 U.S.C. 103(a) as being unpatentable over Kelly in view of Kuberasampath and Lefer as applied to claims 2 and 53, and further in view of Anderson and Brady.

Thus, appellants present their contentions with a respect to a grounds of rejection stated in section VI that does not comply with the rule and/or a grounds of rejection that is either not stated by the examiner or not stated in section VI. Thus, it is unclear how to construe the issues for appeal.

Furthermore, on pages 13-14 of the Brief appellants rely on Exhibits D, F, I, K, L and M and reference arguments and exhibits filed on November 11, 2004. However, appellants do not provide the Board with a copies of the evidence in the evidence appendix of the brief.

According to M.P.E.P. 1205.02:

"An appellant's brief must be responsive to every ground of rejection stated by the examiner that the appellant is presenting for review in the appeal. If a ground of rejection stated by the examiner is not addressed in the appellant's brief, that ground of rejection will be summarily sustained by the Board."

"37 CFR >41.37(c). The rule requires that the brief must set forth the authorities and arguments relied upon. It is essential that the Board be provided with a brief fully stating the position of the appellant with respect to each ground of rejection presented for review in the appeal so that no search of the record is required in order to determine that position. Thus, the brief should not incorporate or reference previous responses. 37 CFR 41.37(c)(1) requires that the brief contain specific items, as discussed below."

"If in his or her brief, appellant relies on some reference, he or she is expected to provide the Board with a copy of it in the evidence appendix of the brief."

The specific items required by 37 CFR 41.37(c)(1)(ix) are:

'(ix) Evidence appendix. An appendix containing copies of any evidence submitted pursuant to 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered in the record by the examiner. Reference to unentered evidence is not permitted in the brief. See 37 CFR 41.33 for treatment of evidence submitted after appeal. This appendix may also include copies of the evidence relied upon by the examiner as to grounds of rejection to be reviewed on appeal. The appendix should start on a new page. If there is no evidence being relied upon by appellant in the appeal, then an evidence appendix should be included with the indication "none." '.